IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 18665 of 2007(V)

PETITIONER:

VALSA T.V.,
THELAKKATTU HOUSE, PUTHENCRUZ P.O.,
ERNAKULAM.

BY ADV. SRI.AJITH KRISHNAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PRINCIPAL SECRETARY, LOCAL SELF GOVERNMENT
DEPARTMENT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
COLLECTORATE, ERNAKULAM.

3. VADAVUCODE PUTHENCRUZ GRAMA PANCHAYATH,
REPRESENTED BY SECRETARY, PUTHENCRUZ P.O.,
ERNAKULAM.

4. THE CIRCLE INSPECTOR OF POLICE,
PUTHENCRUZ P.O., ERNAKULAM.

5. PUTHENCRUZ GOVERNMENT SERVANTS
CO-OPERATIVE SOCIETY, E.NO.153,
REPRESENTED BY ITS SECRETARY, PUTHENCRUZ,
ERNAKULAM.

R1-R2 BY SPECIAL GOVT. PLEADER MR.C.M.SURESH BABU
R5 BY ADV. SRI.DINESH R.SHENOY
R3 BY ADV.SRI.C.N.PRABHAKARAN
SRI.C.R.VINOD KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007 ALONG WITH WPC NO. 20351 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 18665/07)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE ORDER DATED 8.5.07 IN I.A.NO.1553/07 PASSED BY THE LEARNED VACATION JUDGE (ADDL. DISTRICT JUDGE(ADHOC-I), ERNAKULAM).

EXT.P2: TRUE COPY OF THE NOTIFICATION DATED 6.6.2007 ISSUED BY THE 1ST RESPONDENT.

EXT.P3: TRUE COPY OF GOVERNMENT ORDER DATED 16.6.2007 ISSUED BY THE 1ST RESPONDENT.

EXT.P4: TRUE COPY OF THE REPRESENTATION DATED 16.6.2007 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

RESPONDENTS' EXTS.(5TH RESPONDENT):

EXT.R5(a): TRUE COPY OF THE REPORT OF PUBLIC MEETING HELD BY MINISTER FOR LOCAL SELF GOVERNMENT PUBLISHED IN THE NEW INDIAN EXPRESS DAILY DATED 25.6.2007.

EXT.R5(b): TRUE COPY OF THE REPORT DATED 5.5.2007 SUBMITTED BY ADVOCATE PRAVEEN.T., ADVOCATE COMMISSIONER IN I.A.NO.1554/07 IN O.S.NO...../07, DISTRICT COURT(VACATION COURT), ERNAKULAM.

PIUS C. KURIAKOSE,J.

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W.P.(C) Nos.18665 & 20351 of 2007

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Dated: 10th September, 2007

JUDGMENT

W.P.C.No.18665/07 is filed by an individual who owns property adjacent to the plot upon which the petitioner in W.P.C.No.20351 of 2007 is putting up construction. According to the petitioner in W.P.C.No.20351/07, the notification Ext.P3 by which the Government extended the provisions of K.M.B.R. 1999 to all the Panchayats in Kerala will not apply since the construction started and had proceeded even beyond the ground level much prior to the cut off date 6.6.2007 mentioned in Ext.P3. Strong reliance is placed on Ext.R3(a) clarification which at clause 30 and sub-clauses 2, 4, 5 and 6 of clause II that Ext.P3 notification does not have any application in case of buildings where construction has proceeded beyond the ground level. The petitioner placed reliance on Ext.R(a) report submitted by the Assistant Engineer and also the report of the Advocate Commissioner who was appointed by the civil court (Ext.P1 (a)) and also copy of the plaint, Ext.P1 to contend that the construction started long prior to 6.6.2007. The learned Special Government Pleader Mr.C.M.Suresh Babu appearing for L.S.G.Department would submit that the effect of Ext.R3(a) and a

subsequent clarification dated 25.7.2007 is that Ext.P3 will not apply to those constructions which was started prior to 6.6.2007 and proceeded beyond the ground level. Counsel for the third respondent (the petitioner in W.P.C.No.18665/07) would however refute the submissions of Mr.Dinesh R.Shenoy, counsel for the petitioner in W.P.C.No.20351/07. He invited my attention to clause 10 under Ext.R3(a) that the petitioner is making constructions exceeding the N.O.C. which was given to him and therefore it is obligatory that he shall obtain permit. I am not much impressed by the above submission of the counsel for the third respondent since I find that the only rider subject to which N.O.C. was given to the petitioner is that the building shall not violate Section 220(b) of the Kerala Panchayat Raj Act. Whatever that be, since there seems to be some dispute between the parties as to whether the petitioner in W.P.C.No.20351/07 is entitled for the benefit of the Circular Ext.R3 (a) and the subsequent clarification dated 25.7.2007, I am not deciding the issue finally. I direct the Panchayat to hear the petitioner and also the petitioner in W.P.C.No.18665/07 and take a final decision upon the question as to whether the constructions presently being carried out by the petitioners do require any building permits

under K.M.B.R.1999. However considering the prima facie merit noticed by me in the case projected by the petitioner in W.P.C.No.20351/07, even as I relegate the parties to the Panchayat once again, I permit the petitioner to continue with the constructions subject to the final decision to be taken by the Panchayat. The final decision as directed above will be taken at the earliest and at any rate within two months of receiving a copy of this judgment. In order to enable the Panchayat to comply with the above directions, Ext.P6 produced in W.P.C.No.20351 of 2007 is set aside.

The Writ Petitions are disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**